

**Introduced by Senator Huff**

January 20, 2009

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An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

## LEGISLATIVE COUNSEL'S DIGEST

SB 59, as introduced, Huff. Criminal procedure: trials: continuances.

Existing law provides that criminal trials may only be continued for good cause. Under existing law, good cause is defined to include when a prosecutor assigned to specific types of criminal cases has another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

This bill would include, as good cause, a case involving a violation of the California Street Terrorism Enforcement and Prevention Act when the assigned prosecutor has another case in progress, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1050 of the Penal Code is amended to
- 2 read:
- 3 1050. (a) The welfare of the people of the State of California
- 4 requires that all proceedings in criminal cases shall be set for trial
- 5 and heard and determined at the earliest possible time. To this end,
- 6 the Legislature finds that the criminal courts are becoming
- 7 increasingly congested with resulting adverse consequences to the
- 8 welfare of the people and the defendant. Excessive continuances
- 9 contribute substantially to this congestion and cause substantial

1 hardship to victims and other witnesses. Continuances also lead  
2 to longer periods of presentence confinement for those defendants  
3 in custody and the concomitant overcrowding and increased  
4 expenses of local jails. It is therefore recognized that the people,  
5 the defendant, and the victims and other witnesses have the right  
6 to an expeditious disposition, and to that end it shall be the duty  
7 of all courts and judicial officers and of all counsel, both for the  
8 prosecution and the defense, to expedite these proceedings to the  
9 greatest degree that is consistent with the ends of justice. In  
10 accordance with this policy, criminal cases shall be given  
11 precedence over, and set for trial and heard without regard to the  
12 pendency of, any civil matters or proceedings. In further accordance  
13 with this policy, death penalty cases in which both the prosecution  
14 and the defense have informed the court that they are prepared to  
15 proceed to trial shall be given precedence over, and set for trial  
16 and heard without regard to the pendency of, other criminal cases  
17 and any civil matters or proceedings, unless the court finds in the  
18 interest of justice that it is not appropriate.

19 (b) To continue any hearing in a criminal proceeding, including  
20 the trial, (1) a written notice shall be filed and served on all parties  
21 to the proceeding at least two court days before the hearing sought  
22 to be continued, together with affidavits or declarations detailing  
23 specific facts showing that a continuance is necessary and (2)  
24 within two court days of learning that he or she has a conflict in  
25 the scheduling of any court hearing, including a trial, an attorney  
26 shall notify the calendar clerk of each court involved, in writing,  
27 indicating which hearing was set first. A party shall not be deemed  
28 to have been served within the meaning of this section until that  
29 party actually has received a copy of the documents to be served,  
30 unless the party, after receiving actual notice of the request for  
31 continuance, waives the right to have the documents served in a  
32 timely manner. Regardless of the proponent of the motion, the  
33 prosecuting attorney shall notify the people's witnesses and the  
34 defense attorney shall notify the defense's witnesses of the notice  
35 of motion, the date of the hearing, and the witnesses' right to be  
36 heard by the court.

37 (c) Notwithstanding subdivision (b), a party may make a motion  
38 for a continuance without complying with the requirements of that  
39 subdivision. However, unless the moving party shows good cause

1 for the failure to comply with those requirements, the court may  
2 impose sanctions as provided in Section 1050.5.

3 (d) When a party makes a motion for a continuance without  
4 complying with the requirements of subdivision (b), the court shall  
5 hold a hearing on whether there is good cause for the failure to  
6 comply with those requirements. At the conclusion of the hearing,  
7 the court shall make a finding whether good cause has been shown  
8 and, if it finds that there is good cause, shall state on the record  
9 the facts proved that justify its finding. A statement of the finding  
10 and a statement of facts proved shall be entered in the minutes. If  
11 the moving party is unable to show good cause for the failure to  
12 give notice, the motion for continuance shall not be granted.

13 (e) Continuances shall be granted only upon a showing of good  
14 cause. Neither the convenience of the parties nor a stipulation of  
15 the parties is in and of itself good cause.

16 (f) At the conclusion of the motion for continuance, the court  
17 shall make a finding whether good cause has been shown and, if  
18 it finds that there is good cause, shall state on the record the facts  
19 proved that justify its finding. A statement of facts proved shall  
20 be entered in the minutes.

21 (g) (1) When deciding whether or not good cause for a  
22 continuance has been shown, the court shall consider the general  
23 convenience and prior commitments of all witnesses, including  
24 peace officers. Both the general convenience and prior  
25 commitments of each witness also shall be considered in selecting  
26 a continuance date if the motion is granted. The facts as to  
27 inconvenience or prior commitments may be offered by the witness  
28 or by a party to the case.

29 (2) For purposes of this section, “good cause” includes, but is  
30 not limited to, those cases involving murder, as defined in  
31 subdivision (a) of Section 187, allegations that stalking, as defined  
32 in Section 646.9, a violation of one or more of the sections  
33 specified in subdivision (a) of Section 11165.1 or Section 11165.6,  
34 or domestic violence as defined in Section 13700, or a case being  
35 handled in the Career Criminal Prosecution Program pursuant to  
36 Sections 999b through 999h, or a hate crime, as defined in Title  
37 11.6 (commencing with Section 422.6) of Part 1, *or a violation of*  
38 *the California Street Terrorism Enforcement and Prevention Act*  
39 *(Chapter 11 (commencing with Section 186.20) of Title 7 of Part*  
40 *1),* has occurred and the prosecuting attorney assigned to the case

1 has another trial, preliminary hearing, or motion to suppress in  
2 progress in that court or another court. A continuance under this  
3 paragraph shall be limited to a maximum of 10 additional court  
4 days.

5 (3) Only one continuance per case may be granted to the people  
6 under this subdivision for cases involving stalking, hate crimes,  
7 or cases handled under the Career Criminal Prosecution Program.  
8 Any continuance granted to the people in a case involving stalking  
9 or handled under the Career Criminal Prosecution Program shall  
10 be for the shortest time possible, not to exceed 10 court days.

11 (h) Upon a showing that the attorney of record at the time of  
12 the defendant's first appearance in the superior court on an  
13 indictment or information is a Member of the Legislature of this  
14 state and that the Legislature is in session or that a legislative  
15 interim committee of which the attorney is a duly appointed  
16 member is meeting or is to meet within the next seven days, the  
17 defendant shall be entitled to a reasonable continuance not to  
18 exceed 30 days.

19 (i) A continuance shall be granted only for that period of time  
20 shown to be necessary by the evidence considered at the hearing  
21 on the motion. Whenever any continuance is granted, the court  
22 shall state on the record the facts proved that justify the length of  
23 the continuance, and those facts shall be entered in the minutes.

24 (j) Whenever it shall appear that any court may be required,  
25 because of the condition of its calendar, to dismiss an action  
26 pursuant to Section 1382, the court must immediately notify the  
27 Chair of the Judicial Council.

28 (k) This section shall not apply when the preliminary  
29 examination is set on a date less than 10 court days from the date  
30 of the defendant's arraignment on the complaint, and the  
31 prosecution or the defendant moves to continue the preliminary  
32 examination to a date not more than 10 court days from the date  
33 of the defendant's arraignment on the complaint.

34 (l) This section is directory only and does not mandate dismissal  
35 of an action by its terms.